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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

22 CR 305 (JMF)

6 NATHANIEL CHASTAIN,

7 Trial

Defendant.

8 -----x
9 New York, N.Y.
10 April 28, 2023
11 8:55 a.m.

12 Before:

13 HON. JESSE M. FURMAN,

District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

NICOLAS ROOS

THOMAS S. BURNETT

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DANIEL P. FILOR

GREGORY W. KEHOE

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NICHOLAS BARNES

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(Trial resumed; jury not present)

THE COURT: Good morning, welcome back. I obviously got your submissions on the jury instructions, we'll talk about those later.

Number one, I also got the government's submission regarding Defense Exhibit 51, the redline of the Clerky form against the contract. Does the defense wish to be heard on that?

MR. FILOR: Yes, your Honor.

The government's letter from late last night explains precisely why Defendant's Exhibit 51 is highly relevant and necessary. It is obviously a key document in the case. With respect to what --

THE COURT: I think the window cleaners going by.

MR. FILOR: As demonstrated in the government's letter, both founders spoke about the agreement, the Clerky form. Alex Atallah said something different from what Mr. Finzer said. Mr. Atallah said they made modifications to the form. Unclear what those modifications are, unless we put in Defendant's Exhibit 51 to show what the modifications are. Certainly there was an opportunity to make changes. Changes were made. All we would be doing with the document is explaining what a legal redline is, comparing the two documents, and showing what the modifications were.

THE COURT: What's the relevance of the modifications?

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1 There is no evidence that the defendant was aware that that's
2 where the form came from, no evidence that he was aware of
3 modifications or lack thereof. So obviously there were
4 modifications, because it has the company name and
5 Mr. Chastain's name. So at a minimum, there were those.
6 What's the relevance of what the nature and extent of the
7 modifications are?

8 MR. FILOR: It's relevant for two reasons. It goes to
9 the state of mind of OpenSea and its founders, under the
10 *Mahaffy* factors, and what steps they took to keep confidential
11 information confidential.

12 They downloaded a \$19 Clerky form and changed the
13 names of the company and the signatory. They didn't make any
14 substantive changes. They didn't even read the form, at least
15 not in depth. They had the opportunity to make changes if they
16 wanted to customize it to talk about NFTs, to talk about
17 trading. Instead, they kept in biological masks and things
18 like that.

19 So it is certainly relevant to the state of mind about
20 how much OpenSea cared about that document, and about how it
21 was protecting its supposed confidential information. But it
22 also goes to impeachment of Mr. Atallah. He suggested there
23 were modifications. He was asked about certain things, could
24 you have changed this term or that term, and he just responded
25 I don't know, I don't remember, things like that. So it is

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1 relevant for two reasons, your Honor.

2 THE COURT: I am going to grant the government's
3 application. I'm not persuaded. I think it has minimal, if
4 any, relevance. That is to say the precise changes, I think to
5 the extent it has relevance, it's already been elicited through
6 the witnesses. And introducing the redline can only cause
7 confusion and undue prejudice. The application is granted.

8 MR. FILOR: Just briefly on 403, the test certainly
9 isn't if a document is bad for the government, it is
10 prejudicial.

11 THE COURT: I understand what the law is. Thank you.
12 You can have a seat, Mr. Filor. Thank you.

13 Any change of plans for today?

14 MR. ROOS: Two things. One is Ms. Nichols has been I
15 think editing her cross down, so it is shorter than previously
16 previewed. And the second is Mr. Filor just mentioned to me
17 there is another exhibit that they will seek to offer through
18 their paralegal I guess, which as I understand it is a tweet by
19 Dan Viau that your Honor did not permit to be offered
20 yesterday. So, I thought it made sense to deal with that now
21 as opposed to when the paralegal is on the stand.

22 MR. FILOR: I would appreciate a quick opportunity. I
23 promise to be brief.

24 As the Court is probably aware -- I apologize for
25 being slow in the uptake yesterday on my cross exam of

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1 Mr. Viau. I didn't understand the sustained objections went to
2 beyond the scope. So I apologize. I realized it once --

3 THE COURT: That should have been clear given our
4 colloquy at the end of the morning, but go ahead.

5 MR. FILOR: With respect to DX 79, which is a critical
6 document in the case. I'll explain it briefly, but I think
7 we've established both the authenticity and the foundation for
8 the document coming in. Authenticity is provided by Government
9 Exhibit 1001, paragraph 3, which this document is an authentic
10 tweet.

11 THE COURT: Tell me what the relevance is.

12 MR. FILOR: Sure. So Mr. Viau explained that he
13 signed the -- he sent this tweet out. It is encouraging and
14 recruiting new employees for OpenSea. If you look down it
15 refers to the OpenSea.IO forward slash career. He explained
16 this was sent in his business duties.

17 What it is explaining, if you are trading NFTs out on
18 your own, he wants to hire you, or at least interview you to
19 come in, trade NFTs while you work at OpenSea. And the carrot
20 is that the internal Slack channel they have, the OpenSea
21 Slack, in the first line, is the best place to get information
22 that's being shared between OpenSea employees, so you can trade
23 NFTs with that information.

24 Your Honor, we would proffer that the interview
25 process for these engineers, if you look down, what they are

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1 looking for is engineers and some other types of potential
2 employees, we would proffer that the interview panel was
3 Mr. Viau, one other person Jessica Phan, and Nate Chastain.
4 They interviewed these engineers, talked about their NFT
5 trading on the outside, and were recruiting them with a carrot
6 of this internal Slack channel where OpenSea employees are
7 talking about NFTs. And Mr. Viau is describing, the first
8 sentence, or that their open Slack is the best Discord server
9 in all of crypto. It has the best information about NFTs.
10 That's the carrot to recruit these people to OpenSea. It
11 certainly goes to the fact that everybody at OpenSea is trading
12 NFTs, it's fine, it's accepted, and there is information that
13 can be used that's only available within OpenSea. I can't
14 imagine a more relevant document, your Honor.

15 THE COURT: I think that is definitely an
16 overstatement. But Mr. Roos?

17 MR. ROOS: So, your Honor, I think first of all, the
18 top paragraph is hearsay. But, when we objected to this at the
19 time, it was not just for scope, but also for relevancy and for
20 403 reasons.

21 In terms of relevancy, we dispute the reading of this.
22 But regardless, there are a few issues. Number one, Mr. Viau
23 is not on trial, and to the extent this is even what Mr. Filor
24 suggests it is, that does not mean that it is relevant to the
25 defendant.

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1 In particular, second, there is no evidence that the
2 defendant saw this or this informed his state of mind
3 whatsoever.

4 Third, it will create a sideshow in terms of whether
5 or not this is, in fact, this idea of a Slack channel is
6 sharing either confidential information or information people
7 couldn't trade on. There has been testimony that of course
8 there were NFT buying and selling at OpenSea. There is no
9 suggestion within the communication that this is confidential.
10 And anything else? That's it.

11 THE COURT: Okay. Mr. Filor, can you just address,
12 absent any evidence that Mr. Chastain was aware of this tweet
13 or it affected his state of mind, what is the possible
14 relevance of this, even assuming your reading of it is correct.

15 MR. FILOR: It certainly goes to the state of mind of
16 OpenSea. This is how they're recruiting new employees.
17 Mr. Viau is the second employee hired at OpenSea. He has an
18 important position there. He was doing the interview process.
19 And so the state of mind of OpenSea of who you are looking for,
20 whether you are permitted to trade NFTs, whether you're
21 permitted to use information that's on this internal Slack
22 channel. We heard a lot about the Slack channel.

23 THE COURT: It would be one thing if it said come to
24 OpenSea because you'll be privy to confidential information and
25 you can trade on it. That's not what it says. The Slack has

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1 all sorts of information. It could be, hey, Celtics won last
2 night so we should buy the Celtics related NFTs. It doesn't
3 follow that it has anything to do with confidential
4 information.

5 MR. FILOR: I'm sure your Honor is correct that they
6 probably did talk about the Celtics sometimes. What he's
7 describing is it's important for crypto, and Mr. Atallah --
8 sorry. There has been testimony -- oh, from Mr. Atallah that
9 he considers the Clerkly form to be an umbrella policy.
10 Everything is confidential within the company, until someone
11 gets permission, then it's not.

12 That testimony means everything that's happening on
13 this Slack channel, and certainly there is work-related
14 conversations, which is what Mr. Viau is saying when he said it
15 is the best Discord server in all of crypto. This is a public
16 tweet. This is not something they are hiding. This is what
17 they are putting out to the entire world, which says it is okay
18 to have a leg up, it is okay to use information that's within
19 OpenSea. So it is highly relevant to the state of mind of
20 OpenSea.

21 MR. ROOS: Two things on this, very briefly. Number
22 one, Mr. Atallah's testimony was about the scope of the
23 coverage or the protection of the confidentiality agreement.
24 Meaning its umbrella confidentiality policy. He was not saying
25 all information within OpenSea is confidential, that there is

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1 an umbrella confidentiality over all Slack communications.

2 Second, Mr. Filor's point about the state of mind of
3 OpenSea, Mr. Viau, who serves some sort of legal function and
4 is an engineer, is not one of the two people who could testify
5 about the state of mind of OpenSea as the founder.

6 The Court has already had litigation on this. We
7 moved to preclude, for instance, cross-examination of -- and
8 the example we used was Jessica Phan, that various employees'
9 sort of interpretation of things was not relevant to how
10 OpenSea as the company treated it.

11 So I think there are a lot of reasons why this is
12 neither relevant that your Honor identified, and why it will be
13 very confusing. But it is also just not relevant to OpenSea's
14 state of mind.

15 THE COURT: All right. Mr. Filor, final word.

16 MR. FILOR: Your Honor, the last thing that I would
17 say is on pages 574 and 575 of the transcript where Mr. Viau is
18 talking about this document. And he says -- I am trying to
19 find the quote your Honor very quickly. With respect to the
20 business -- oh.

21 "Mr. Viau, did you send this tweet in the course of
22 your business for OpenSea?

23 "Yes."

24 That's at lines 10 through 12, your Honor, of 575.

25 THE COURT: I don't think there is a dispute about

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1 that.

2 I think, well, bottom line is I am going to preclude
3 this as well. Number one, it doesn't speak at all to
4 Mr. Chastain's state of mind, since there is no evidence that
5 he was aware of this tweet, that he had anything do with it,
6 that he saw it, etc. I don't hear any argument to the
7 contrary.

8 To the extent it is being offered for OpenSea's state
9 of mind, number one, I don't read it the way the defense does.
10 I think it is a leap to suggest that because there is an
11 OpenSea Slack conversation, that it can be argued that that
12 relates in any way to confidential information. I agree with
13 Mr. Roos that there is no testimony that all information within
14 OpenSea is confidential. Again, if you are discussing the
15 Celtics won, that's not confidential information. I don't
16 think anyone during this trial has suggested otherwise. And in
17 that sense, I think it is not a fair or accurate representation
18 of this to make the argument that this is inviting people to
19 come to OpenSea because they'll be able to trade on
20 confidential information, and in that regard, it is not proper
21 argument.

22 But, beyond that, to the extent it's being offered to
23 reflect on OpenSea's state of mind, I don't think Mr. Viau is a
24 person whose state of mind is relevant here. I have permitted
25 testimony regarding the state of mind of Mr. Atallah and Mr.

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1 Finzer, because they were the principals of the company. And
2 in that regard, I think what they were thinking and how they
3 considered the information and understood the agreement and so
4 forth is relevant. And that's why I permitted that testimony.

5 But just as I indicated that Ms. Phan would not be
6 permitted to give her opinions about these sorts of things, I
7 think Mr. Viau is more akin to her than to him. So even if it
8 were Mr. Viau inviting this, I don't think that is admissible
9 with respect to OpenSea's state of mind.

10 So, for those reasons, I will preclude it as
11 irrelevant. And to the extent it has any relevance, also 403.

12 MR. FILOR: One sentence of a proffer.

13 THE COURT: Okay.

14 MR. FILOR: Mr. Chastain was aware of the tweet. He
15 was on the interview panel with Mr. Viau and Ms. Phan. Those
16 were the three that were interviewing the recruits that were
17 brought to interview for the company.

18 THE COURT: Okay. Is there any evidence of that in
19 the trial?

20 MR. FILOR: I thought your Honor said that we hadn't
21 proffered whether or not Mr. Chastain was aware of this, and so
22 I was proffering that.

23 THE COURT: I was saying there is no evidence at the
24 trial he was aware. If he plans to take the stand, if he wants
25 to take the stand and says he was aware of this tweet, that

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would be one thing and it might well change it. But in the absence of that, unless you can anticipate and proffer there will be evidence of that at this trial, it doesn't make it relevant.

MR. FILOR: Understood.

THE COURT: On that subject, Mr. Miller or Mr. Filor, I think this would be the appropriate time to allocute Mr. Chastain, if indeed he has decided not to take the stand.

MR. MILLER: Yes. He's decided not to take the stand, your Honor.

THE COURT: Mr. Chastain, good morning.

THE DEFENDANT: Good morning, your Honor.

THE COURT: How are you feeling this morning?

THE DEFENDANT: I'm feeling good, your Honor.

THE COURT: In the last 48 hours, have you taken any medicine, pills, drugs, or had any alcohol?

THE DEFENDANT: No, your Honor.

THE COURT: Is your mind clear today?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand what's happening here today?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand as a defendant in a criminal trial you have the right to testify on your own behalf if you want to testify?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you also understand you also have the
3 right not to testify?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand if you decide not to
6 testify, that no one, including the jury, could draw any
7 inference or suggestion of your guilt from the fact that you
8 did not testify?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand I will instruct the jury
11 to that effect if you do not testify?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand whether you testify or
14 not is a decision for you and you alone to make, with the
15 assistance and advice of your lawyers, but, again, ultimately
16 it's your decision to make and not your lawyers' decision to
17 make?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Please don't tell me the substance of your
20 discussions with your lawyers, but have you discussed -- just
21 yes or no -- have you discussed with your lawyers whether you
22 should or should not testify in this case?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Have you had enough time to do that, to
25 talk to them about whether to testify, and about the advantages

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1 and disadvantages of testifying?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Is it your decision not to testify at your
4 trial?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Is that your decision, assisted by
7 counsel, but ultimately your decision?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do both counsel agree that is sufficient
10 or think I should ask any additional questions?

11 MR. MILLER: That's sufficient, your Honor. Thank
12 you. No additional questions needed.

13 MR. FILOR: Agreed, your Honor. Thank you.

14 MR. ROOS: The same from the government.

15 THE COURT: Very good. Unless there is anything else,
16 let's get Dr. Edman back on the stand and get the jury in to
17 proceed.

18 Ms. Nichols, any estimate of how long the rest of
19 cross will be?

20 MS. NICHOLS: Less than 30 minutes, your Honor.

21 THE COURT: All right.

22 MR. MILLER: Just so your Honor is aware, we intend to
23 rest after Dr. Edman.

24 THE COURT: All right. So the jury will be pleased to
25 be released early. Where is Dr. Edman?

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1 MR. FILOR: I bet Charlie went to go get him, but I'll
2 make sure.

3 (Continued on next page)

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Edman - Cross

(Jury present)

THE COURT: Good morning, ladies and gentlemen.

Welcome back. Thank you for being here on time. We will continue with the direct -- sorry -- the cross-examination of Dr. Edman.

I will also give you a heads up that I suspect we are going to have a short day for your purposes. Hopefully that's a welcomed thing. It's like getting out of school early on a Friday. But, long story short, I suspect it will be a relatively short day. There are some things we need to take care of before we proceed with summations, which is why, rather than having you stick around for a large chunk, I'm going to probably dismiss you early for the weekend. I will have more to say on that later.

And with that, Ms. Nichols, you may proceed.

MS. NICHOLS: Thank you, your Honor.

MATTHEW EDMAN,

CROSS-EXAMINATION

BY MS. NICHOLS:

Q. Good morning, Dr. Edman.

A. Good morning.

Q. You testified on direct examination yesterday that it is a common misconception to call wallet addresses anonymous; is that right?

A. Correct.

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Edman - Cross

1 Q. And it's common, because some people use the term
2 "anonymous" to describe wallet addresses, correct?

3 A. It is something that I've seen before, yes.

4 Q. Can we please pull up Government Exhibit 201. Let's turn
5 to page 4.

6 So the top message here in this exhibit is Nate
7 Chastain, correct?

8 A. That's what it says. Whether or not it's him actually
9 writing this, I can't say.

10 Q. Understood.

11 So the first line reads "So if we really like it, I'll
12 buy it, and then send the funds to the creator once we can get
13 in touch with him."

14 Correct?

15 A. That's what it says, yes.

16 Q. And the second message says "From an anon account with no
17 OpenSea history." Right?

18 A. That's what it says, yes.

19 Q. And "anon" is a shorthand for anonymous, correct?

20 MR. MILLER: Objection.

21 THE COURT: Sustained.

22 Q. Let's pull up, please, Government Exhibit 306.

23 Dr. Edman, this appears to be an account on OpenSea,
24 correct?

25 A. It appears so, yes.

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Edman - Cross

1 Q. And the name associated with this account is Unnamed.

2 Right?

3 A. Whether this account gave the pseudonym Unnamed or that's
4 just a placeholder that OpenSea put in there, I can't say.

5 Q. Understood. But the there is -- but the only word
6 associated with the account that you can see on this exhibit is
7 Unnamed, correct?

8 A. There are words associated with the account, like the date
9 it joined. But I only see Unnamed under the circle.

10 Q. Understood. So, right under -- whether it is a name or
11 whether it is a pseudonym, the title Unnamed, right under that,
12 is a string of letters and numbers, correct?

13 A. Correct.

14 Q. And you understand that that string of letters and numbers
15 is an abbreviated version of a wallet address, right?

16 A. Yes.

17 Q. You can't tell from looking at this page the true identity
18 of the person that made this account, right?

19 A. In terms of their real, real world human name, no.

20 Q. And there doesn't appear to be any link to a Twitter
21 account associated with this account, correct?

22 A. I don't see one, no.

23 Q. This string of letters and numbers that's now highlighted,
24 that's one of the wallet addresses that you looked at as part
25 of your work in this case, isn't it?

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Edman - Cross

1 A. I'd have to refresh my recollection. I don't remember all
2 of the wallet addresses.

3 Q. And that's because it's hard to remember the names of the
4 wallet addresses when they're just strings of random letters
5 and numbers, right?

6 A. Yes.

7 MS. NICHOLS: Mr. Bianco, can we just please take off
8 the highlighting and zoom out here.

9 Q. So, Dr. Edman, I want to direct you to the activity log
10 that is reflected here. There is only a handful of
11 transactions reflected on this page. Would you agree?

12 MR. MILLER: Objection.

13 THE COURT: Sustained.

14 Q. There are seven items in this activity log, correct?

15 A. Sorry. What do you mean by "items"?

16 Q. Rows in the chart.

17 A. Okay. There are seven rows, yes.

18 Q. Can we zoom in on those rows, Mr. Bianco.

19 And do you see the column that says "item"?

20 A. I do.

21 Q. And underneath that, there are seven pictures, correct?

22 A. It looks to me like there are two different pictures, but
23 some of them are repeated.

24 Q. Okay. And one of the pictures corresponds to the bolded
25 all caps words THOUGHTS #34 out of 76, correct?

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Edman - Cross

1 A. Correct.

2 Q. And one of the pictures corresponds to a bolded caption
3 Don't Get Me Wrong. Correct?

4 A. Correct.

5 Q. We can take that down. Let's go to Government Exhibit 309,
6 please.

7 This is another OpenSea account, right?

8 A. It appears so, yes.

9 Q. And the name of this account is Unnamed, right?

10 A. Again, I can't say whether the individual controlling this
11 account gave the account the name Unnamed or if it was assigned
12 by OpenSea as a placeholder.

13 Q. Right. But there is nothing on this exhibit that shows you
14 the true identity of the person who made the account, right?

15 A. In terms of their human name, not that I see.

16 Q. Underneath Unnamed, there is a string of letters and
17 numbers, correct?

18 A. Correct.

19 Q. And do I have it right that you wouldn't be able to tell
20 from looking at this whether this is one of the letters and
21 numbers that you analyzed as one of the wallet accounts
22 associated with this case, right?

23 A. I would have to go back to the documents to verify.

24 Q. And there is no link to a social media account associated
25 with this account, right?

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Edman - Cross

1 A. Not that I see in this screenshot.

2 Q. Okay. And do you see in the activity log that there is a
3 column called "item"?

4 A. I do.

5 Q. And do you see that in the column called "item," there is a
6 series of pictures?

7 A. I see that.

8 Q. And those appear to be all the same picture, right?

9 A. It appears so.

10 Q. And the caption associated with that picture is The Brawl
11 2, right?

12 A. Correct.

13 Q. Let's go to Government Exhibit 310, please.

14 This is another OpenSea account, right?

15 A. It appears so, yes.

16 Q. And the name or its pseudonym associated with this account
17 is Unnamed, right?

18 A. Correct.

19 Q. There is no profile picture of a person.

20 A. It doesn't appear so.

21 Q. Underneath Unnamed, there is a string of letters and
22 numbers, right?

23 A. There is, yes.

24 Q. We can take that down.

25 Can we pull up Government Exhibit 307, please.

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Edman - Cross

1 This is another OpenSea account, right?

2 A. It appears so, yes.

3 Q. And the name or perhaps the pseudonym of this account is
4 Unnamed, right?

5 A. Correct.

6 Q. And underneath Unnamed, there is a series of letters and
7 numbers, correct?

8 A. Correct.

9 Q. And that's, you understand, a wallet address, right?

10 A. Correct.

11 Q. By the way, as you look at this page, there's no IP address
12 associated with this account that you can see, correct?

13 A. Not that's visible on this screenshot.

14 Q. We can take that down.

15 Can we please pull up Government Exhibit 319.

16 This is another OpenSea account, right?

17 A. It appears so, yes.

18 Q. It has the same name or pseudonym, which is Unnamed, right?

19 A. Correct.

20 Q. And underneath Unnamed, there is a string of letters and
21 numbers, correct?

22 A. Correct.

23 Q. No social media that you can see, right?

24 A. Not that I can see.

25 Q. And the activity log that we can see consists of seven

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Edman - Cross

1 rows, correct?

2 A. Correct.

3 Q. And in that column for "item", there is a picture, and it
4 appears to be the same picture seven times, right?

5 A. It appears so.

6 Q. And the caption or title associated with that item is
7 Revisit Childhood, right?

8 A. That's what it says.

9 Q. It says it for each of them, right?

10 A. Yes.

11 Q. All right. We can take that down, and please pull up
12 Government Exhibit 320.

13 This is another account on OpenSea, right, Dr. Edman?

14 A. It appears so.

15 Q. And the name or title or pseudonym of this account is
16 Unnamed, right?

17 A. Correct.

18 Q. And underneath Unnamed, there is a series of letters and
19 numbers, right?

20 A. Correct.

21 Q. Those letters and numbers are corresponding to a wallet
22 address, right?

23 A. Correct.

24 Q. And you don't know off the top of your head whether that's
25 one of the wallet addresses that you looked at as part of this

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Edman - Cross

1 case?

2 A. Not off the top of my head. I would have to go back to the
3 documents.

4 Q. Let's take that down and pull up Government Exhibit 311,
5 please.

6 This is one of the ones we looked at yesterday. I
7 just had a couple followup questions.

8 There is only six rows in the activity log here,
9 correct?

10 A. I only see six, correct.

11 Q. And in the column for "item," there is a little picture,
12 right?

13 A. There is.

14 Q. And it appears to be the same picture six times, right?

15 A. It appears so.

16 Q. And the title associated with the picture is Journey and
17 Her Loyal Fellowship, right?

18 A. Correct.

19 MS. NICHOLS: And Mr. Bianco, let's zoom out so we can
20 see the whole page.

21 Q. And other than those six rows, there is no other activity
22 associated with this account that you can see reflected on this
23 page, correct?

24 A. Not that I see.

25 Q. All right. Let's pull up, please, Government Exhibit 313.

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Edman - Cross

1 This is another OpenSea account, right, Dr. Edman?

2 A. It appears so.

3 Q. And the name on this one is Unnamed, right?

4 A. Whether that's the name assigned by OpenSea or a pseudonym
5 chosen by the account holder, I can't say.

6 Q. Okay. Under Unnamed, there is a string of letters and
7 numbers, right?

8 A. There is.

9 Q. And there's no IP address information reflected on this
10 page, correct?

11 A. Not that I see.

12 Q. And there is no social media linked on this page, right?

13 A. Not that I see.

14 Q. We can take that down and please pull up Government Exhibit
15 323.

16 This is another OpenSea account, right, Dr. Edman?

17 A. It appears so.

18 Q. And the name or title or pseudonym is Unnamed, right?

19 A. Correct.

20 Q. We can take that down. Let's pull up Government Exhibit
21 318, please.

22 This is another OpenSea account, right?

23 A. Correct.

24 Q. And at the top, the name or pseudonym is Unnamed, right?

25 A. Correct.

N4s3cha1

Edman - Cross

1 Q. There's no profile picture of a person, correct?

2 A. Not that I see.

3 Q. There's no name on here that appears to be the kind of name
4 that would be on a birth certificate, right?

5 A. Not --

6 MR. MILLER: Objection.

7 THE COURT: Sustained.

8 Q. There's no social media account that you can see linked to
9 this page, correct?

10 A. Not that I see.

11 Q. And underneath Unnamed, there is a string of letters and
12 numbers, right?

13 A. Correct.

14 Q. And you understand that's a wallet address, correct?

15 A. Correct.

16 Q. Okay. So we can take at that down.

17 Dr. Edman, you testified yesterday about mixers and
18 tumblers. Do you remember that?

19 A. I do.

20 Q. And your opinion is that the defendant did not use those,
21 correct?

22 A. I saw no evidence that he had.

23 Q. You never interviewed the defendant, right?

24 A. I did not.

25 Q. You didn't ask him any questions about his technology use,

N4s3cha1

Edman - Cross

1 true?

2 A. Correct. I never spoke with him.

3 Q. So you didn't have a chance to ask him any questions about
4 his habits with respect to technology?

5 A. I never spoke with him, so no.

6 Q. And you didn't ask him any questions about his knowledge
7 with respect to different kinds of technology, right?

8 A. I never spoke with him, so no.

9 Q. So you can't say one way or another whether the defendant
10 knew how to use mixers and tumblers, right?

11 A. I can't speak to what the defendant does or does not know.
12 But, it's my opinion, based on my experience, that using a
13 tumbler, there is plenty of public information that someone
14 could use to use a mixer or tumbler if they wanted to.

15 Q. Okay. So to understand your methodology with respect to
16 this case, I think you testified that you reviewed a universe
17 of transactions that you understood were at issue in the case;
18 is that right?

19 A. That is correct.

20 Q. And I think you testified that the list of those
21 transactions that were at issue came from the government; is
22 that right?

23 A. That was my understanding, yes.

24 Q. And you testified that one of your opinions that you were
25 able to form is that, for that universe of transactions that

N4s3cha1

Edman - Cross

1 you looked at, all of the wallet addresses were associated with
2 only two wallets. Is that right?

3 A. Sorry. Could you please restate the question?

4 Q. Sure. I think I understand that one of your opinions is
5 that for the universe of transactions that you looked at, all
6 of the wallet addresses were associated with only two wallets.
7 Is that right?

8 A. No.

9 Q. So, it's not your opinion that the defendant only used two
10 wallets in this case?

11 A. The question you are asking now is different than the
12 previous one. In the transactions that I rereviewed that were
13 identified by the government, each of the transactions has a
14 sender and a recipient. It is my opinion that the defendant
15 only used two wallets. But each transaction involved addresses
16 that were not part of the defendant's wallets.

17 MS. NICHOLS: Okay. So, I'd like to pull up for the
18 witness and the parties and the Court Government Exhibit 1004,
19 which is a demonstrative. Sorry. 1104.

20 Your Honor, we'd like to display this, we'd like to
21 publish this demonstrative.

22 THE COURT: Any objection?

23 MR. MILLER: No objection, other than there is an
24 exhibit sticker on the bottom, and it is just a demonstrative
25 we're consenting to.

N4s3cha1

Edman - Cross

1 THE COURT: Understood. You may display it.

2 Ladies and gentlemen, reminder that a demonstrative is
3 not evidence. It is just something the parties are permitted
4 to use in connection with the witness's testimony on the theory
5 it helps you understand and evaluate the witness's testimony.
6 It is not, unless it's offered and admitted into evidence, it
7 is not in evidence, even if it has a government exhibit
8 sticker. So with that understanding, you may display it.

9 MS. NICHOLS: Thank you, your Honor.

10 Q. Dr. Edman, this appears to be three different wallet
11 addresses, correct?

12 A. That's what it appears to be.

13 Q. And you can't tell from just looking at these wallet
14 addresses whether they were associated with one wallet or
15 multiple wallets, can you?

16 A. Not just by solely looking at the addresses as displayed
17 here.

18 Q. Okay. We can take that down.

19 The reason that you are able to offer an opinion in
20 this case about the number of wallets that the defendant used,
21 is that you reviewed the defendant's laptop, right?

22 A. In addition to the ledger cold storage device.

23 Q. And you looked at that laptop and the ledger cold storage
24 device in counsel's office before your testimony I think you
25 said; is that right?

N4s3cha1

Edman - Cross

1 A. Correct.

2 Q. And the defendant was present, but you didn't speak to him,
3 correct?

4 A. Correct.

5 Q. And defense counsel was present, correct?

6 A. Correct.

7 Q. And in the presence of defense counsel, you looked at the
8 defendant's laptop and the cold storage device, correct?

9 A. Correct.

10 Q. And defense counsel told you that that cold storage device
11 belonged to the defendant, right?

12 MR. MILLER: Objection.

13 THE COURT: Overruled.

14 A. They did, yes.

15 Q. So defense counsel told you that the defendant had two
16 wallets, right?

17 MR. MILLER: Objection.

18 THE COURT: Overruled.

19 A. No, they did not tell -- make that conclusion for me. I
20 determined that based on my analysis.

21 Q. And based on the fact that defense counsel told you that
22 the cold storage device belonged to the defendant, right?

23 A. Correct.

24 MS. NICHOLS: I'd like to pull up the defense
25 demonstrative that's been marked as Edman Demonstrative 1 for

N4s3cha1

Edman - Cross

1 the jury, your Honor.

2 THE COURT: You may.

3 Q. So you testified about this yesterday, right, Dr. Edman?

4 A. I did.

5 Q. And this is a demonstrative that you created, correct?

6 A. Correct.

7 Q. And the information that's being conveyed in this
8 demonstrative is that there can be multiple wallet addresses
9 within a singular wallet; is that right?

10 A. Correct.

11 Q. And so on the left side, we see a Meta Mask wallet, right?

12 A. Yes.

13 Q. And on the right side, we see a traditional wallet, right?

14 A. Correct.

15 Q. And there's arrows from the Meta Mask wallet into the
16 traditional wallet, correct?

17 A. Correct.

18 Q. And those arrows signify wallet addresses going from the
19 Meta Mask wallet into the traditional wallet, right?

20 A. The arrows don't signify a wallet address going anywhere.
21 It is showing there is a relationship between the accounts
22 identified in Meta Mask and a wallet address.

23 Q. It's signifying the relationship in the metaphor that
24 you've created, correct?

25 A. Correct.

N4s3cha1

Edman - Cross

1 Q. In the metaphor that you've created, the wallet addresses
2 are symbolized by credit cards, right?

3 A. Credit cards, debit cards, whatever kind of card you want.

4 Q. Physical, physical cards.

5 A. Sure.

6 Q. Okay. And so you created three slots for these physical
7 credit cards or debit cards, correct?

8 A. I didn't create the slots. It was just a stock image that
9 had three slots in it.

10 Q. This is your demonstrative, right?

11 A. Correct.

12 Q. And you sent it to defense counsel, right?

13 A. I did.

14 Q. And you testified yesterday that this demonstrative would
15 help illustrate your testimony, right?

16 A. I did.

17 Q. Okay. So would you agree with me that there are only three
18 credit cards or debit cards represented in this demonstrative?

19 A. Correct.

20 Q. But, there were at least 22 wallet addresses at issue in
21 this case as associated with the defendant, correct?

22 A. That is my recollection, yes.

23 MS. NICHOLS: So, at this time, your Honor, the
24 government would like to display the demonstrative Government
25 Exhibit 1101.

N4s3cha1

Edman - Redirect

1 THE COURT: Any objection?

2 MR. MILLER: No, other than, again, there is an
3 exhibit sticker, but this is just a demonstrative.

4 THE COURT: Keep your voice up, Mr. Miller.

5 With that understanding, you may proceed. And same
6 instructions, ladies and gentlemen.

7 MS. NICHOLS: May we publish, your Honor?

8 THE COURT: You may.

9 Q. So if you were to make an image of a traditional wallet
10 that had 22 credit card or debit card slots, it would look more
11 like this, correct?

12 A. It could, yes.

13 MS. NICHOLS: No further questions, your Honor.

14 THE COURT: All right. Redirect.

15 MR. MILLER: Yes, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. MILLER:

18 Q. Good morning, Dr. Edman.

19 A. Good morning.

20 Q. You were just shown by government counsel a number of
21 exhibits from screenshots from OpenSea. Do you recall that?

22 A. I do.

23 Q. Do you recall that there was a profile that had Unnamed
24 under it? Do you remember for all those exhibits?

25 A. I do.

N4s3cha1

Edman - Redirect

1 Q. In your experience and expertise in blockchain and
2 cryptocurrency, do users always post their true identities on
3 platforms like OpenSea?

4 A. No.

5 Q. Do users post their IP addresses associated with their
6 accounts on such platforms?

7 A. They do not.

8 Q. In your expertise and experience in blockchain and
9 cryptocurrency -- withdrawn.

10 In your experience and expertise in blockchain and
11 cryptocurrency, is it uncommon for users to post their
12 identity? Is that uncommon?

13 MS. NICHOLS: Objection.

14 THE COURT: Can you ask the question again.

15 MR. MILLER: Sure.

16 Q. As an expert in blockchain and cryptocurrency, is it
17 uncommon for users to not post their true identities on
18 platforms like OpenSea?

19 THE COURT: Can we try that again without the three
20 negatives.

21 MR. MILLER: Understood.

22 Q. I think the point is made. Let's move on to --

23 MS. NICHOLS: Move to strike.

24 THE COURT: Hang on. I don't think there was any
25 answer to strike. So, I'll remind the jury that it is the

N4s3cha1

Edman - Redirect

1 witness's answers, not any question that is evidence.

2 You may proceed.

3 MR. MILLER: If we could put up, your Honor, Defense
4 Exhibit 49, which is in evidence.

5 THE COURT: Can somebody bring it up so I can see it?
6 You may.

7 MR. MILLER: Thank you.

8 Q. So, Dr. Edman, do you remember testifying about this
9 exhibit yesterday?

10 A. I do.

11 Q. You were asked a series of questions this morning about how
12 you knew that there were two wallets. Do you recall those
13 questions?

14 A. I do.

15 Q. And putting aside the particular cold wallet that you were
16 shown in counsel's office that you were asked about, was there
17 an independent basis for you to make the determination that, in
18 fact, there were two wallets and two wallets only that were
19 used by the defendant in terms of the transactions that you
20 reviewed from Etherscan?

21 A. In terms of the transactions that I reviewed from
22 Etherscan, on the left you have one singular address that is
23 not part of the wallet shown in the middle there. All of the
24 addresses shown in the middle are associated with the same Meta
25 Mask hot wallet, and all of the funds from that wallet go back

N4s3cha1

Edman - Redirect

1 into the one singular address, which is separate and distinct
2 from the Meta Mask hot wallet.

3 Q. Was that part of your analysis in forming your third
4 opinion that you testified about yesterday, that there were two
5 wallets that were used by the defendant in this case?

6 A. It was.

7 Q. You were just shown a demonstrative that showed essentially
8 a pretty large wallet with a number of addresses beyond the
9 three that were used in your demonstrative.

10 Was there any reason that you chose for your
11 demonstrative three slots?

12 A. Again, only that was a stock image that was available for
13 use.

14 Q. Is it common, from your expertise and experience as an
15 expert in blockchain and cryptocurrency, do users often have
16 multiple addresses within one wallet?

17 MS. NICHOLS: Objection.

18 THE COURT: Overruled.

19 A. In my experience, it is very common to have multiple
20 addresses within one wallet.

21 Q. There is nothing magical about the three slots that you had
22 in the demonstrative. There could be more?

23 A. No, sir. It certainly could be more.

24 MR. MILLER: Nothing further, thank you, your Honor.

25 THE COURT: Can I see counsel at sidebar for a moment,

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Edman - Redirect

1 please.

2 (At the sidebar)

3 THE COURT: So, I have a concern, and it may be that
4 the best thing is to leave it, but yesterday you made a
5 representation to me, Mr. Miller, that Dr. Edman's testimony
6 about the number of wallets and so forth was based on his
7 independent evaluation, and not based in any way, shape or form
8 on anything that Mr. Chastain communicated verbally or
9 otherwise or you communicated verbally or otherwise.

10 He just testified on cross-examination that your
11 telling him that was the cold storage wallet is part of what he
12 based his opinion on.

13 It is, number one, contrary to the representation you
14 made to me yesterday, which is disturbing, but second of all,
15 it raises the question whether he should have been able to
16 testify to that effect. I am not sure whether this matters,
17 whether it was two wallets, 22 wallets, whatever. I don't know
18 what that matters, but that's for you guys to argue.

19 My point is I'm not sure it should have come in, given
20 that testimony.

21 MR. MILLER: So, your Honor, I absolutely did not
22 intend to make any misrepresentation to the Court. My
23 understanding from talking to Dr. Edman before he testified was
24 that, even though determining whether there was actually this
25 particular cold wallet or not was in part based on looking at

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Edman - Redirect

1 the actual device, it was his understanding, from looking at
2 the transactions, that there were two wallets. That's what I
3 understood.

4 THE COURT: Okay. But, he literally just testified:
5 "I determined that based on my analysis."

6 And Ms. Nichols asked: "And based on the fact that
7 defense counsel told you that the cold storage device belonged
8 to the defendant, right?

9 "A. Correct."

10 MR. MILLER: I was surprised by that answer, because I
11 did discuss this with Dr. Edman. I don't know how else to say
12 it. I certainly would not make any misrepresentations to the
13 Court.

14 MS. NICHOLS: So, I can speak to my understanding, but
15 I think, actually, maybe it will be more helpful to make a
16 suggestion about what we should do.

17 THE COURT: I am raising it now in part because
18 Dr. Edman is still on the stand. So if there is any further
19 inquiry that either side wishes to make on this, that's one
20 option.

21 MS. NICHOLS: I don't know that further inquiry is
22 needed, your Honor. I think that what we could do is strike
23 that testimony outside the presence of the jury, so as to not
24 put a bullseye on it, and prohibit counsel from arguing.

25 THE COURT: Strike the testimony about two wallets?

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Edman - Redirect

1 MS. NICHOLS: Right. But I don't think we need to do
2 that in front of the jury. I think sometimes, as your Honor
3 has noted in other contexts, curative instructions can be
4 counterproductive.

5 So I think our proposal would be we strike the
6 opinion, and not permit it to be part of summations.

7 THE COURT: So you don't want to inquire further of
8 Dr. Edman?

9 MS. NICHOLS: No.

10 MR. MILLER: Can I make an alternative suggestion,
11 your Honor?

12 THE COURT: Do you wish to inquire further of
13 Dr. Edman?

14 MR. MILLER: I might, but I want to say this. My
15 understanding, and what I believed and I represented to the
16 Court, was that in order to determine whether the cold storage
17 device had the address on it that was the address that he
18 identified as all those transactions happening with, he needed
19 to see that physically on that device, which is what I believe
20 I was talking about yesterday. But my understanding is from
21 his analysis of the transactions on the blockchain, including
22 Etherscan, was that based on the fact that there were all these
23 transfers to this one address, that was consistent with having
24 two wallets. That's what I understood.

25 THE COURT: Here's my suggestion. It doesn't sound

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Edman - Redirect

1 like, unless you can tell me otherwise, that there is further
2 inquiry of Dr. Edman needed in front of the jury.

3 So I propose that I excuse him, I presume that the
4 defense will then rest, and we can excuse the jury. I propose
5 that Dr. Edman stick around, and that we discuss this. I think
6 one possibility is that I take further testimony of him without
7 the jury's presence to determine whether that was necessary to
8 him forming the opinion. If it was, then I'm prepared to grant
9 some sort of relief or at least discuss what relief ought to be
10 granted. If it wasn't, then perhaps we leave well enough
11 alone.

12 That's my current thinking. Unless someone can tell
13 me there is further inquiry necessary with Dr. Edman here in
14 front of the jury, we should get them out.

15 MS. NICHOLS: I don't think that counsel should be
16 permitted to make further inquiry in front of the jury after
17 he's concluded his redirect, your Honor.

18 MR. MILLER: One last point. And that is, even if
19 that is the sole basis -- but I don't believe that is the
20 case -- but even if that was the basis for him determining that
21 this particular address was a cold wallet device, it still is
22 my understanding that he believes that there was actually two
23 wallets based on the transactions that occurred. So, and
24 furthermore, even though he determined that from looking at the
25 device that Mr. Chastain plugged in, in our offices.

N4s3cha1

1 THE COURT: Mr. Miller, let's argue this afterwards.
2 I think we are done with Dr. Edman in front of the jury.

3 (In open court)
4 THE COURT: Sorry for that interruption, ladies and
5 gentlemen.

6 With that, Dr. Edman, you may step down from the
7 stand. Thank you very much.

8 (Witness excused)

9 THE COURT: All right. Mr. Miller?

10 MR. MILLER: Your Honor, the defense rests.

11 THE COURT: All right. So, ladies and gentlemen, you
12 just heard some magic words again. Defense has rested its
13 case, which means that you have now heard all of the evidence
14 in this case.

15 I told you earlier I would let you go early. Early
16 dismissal on a Friday, unless people are going to complain
17 about it. Hopefully you are okay with it.

18 The reason for that is there are some issues I need to
19 discuss with the lawyers. As I told you, the next phase of the
20 case is summations. That's the parties' opportunity to argue
21 to you about the evidence and what conclusions you should draw
22 from the evidence. And then after that, I give you
23 instructions about the law that you are to apply. The law is
24 an exceedingly important part of the process. As you will see
25 next week when I instruct you about the law, I am going to give

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1 you the instructions in writing to follow along as I read.

2 But, because of its importance, both sides have an opportunity
3 to see what I am going to instruct you and to give their
4 thoughts and suggestions to me. That's part of what we need to
5 take care of, and that sometimes takes a little -- a long time.

6 So, bottom line is, rather than having you sit in that
7 room for a while or wander around lower Manhattan, I think it
8 makes more sense to let you go for the weekend and then come
9 Monday, fresh and ready for summations and instructions and the
10 beginning of your deliberations. So that's what we are going
11 to do and why I'm letting you go early.

12 Let me say a few things. First of all, on Monday we
13 will begin promptly with summations, and then after that, my
14 instructions, and then once I complete those, you'll begin your
15 deliberations. As I mentioned yesterday, I am going to ask
16 that you plan to be here or that you can be here until
17 5 o'clock. Obviously, how long you deliberate is ultimately up
18 to you. But bottom line is we won't have the same truncated
19 day. That's in part because it's harder to manage with
20 summations, because they take a while, and I don't want to
21 interrupt those. I want to make sure you can listen carefully
22 and so forth.

23 So, bottom line is be prepared to be here a full day
24 on Monday. I Promise we'll take appropriate breaks. I also --
25 Ms. Smallman will correct me if I'm wrong -- because your

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1 deliberations will begin on Monday, we will actually arrange to
2 order lunch for you. We'll have a longer lunch break and we'll
3 arrange for lunch. So when you come in on Monday, you'll find
4 lunch order forms. If you can each fill those out,
5 Ms. Smallman will collect them for you and there will be lunch
6 for you in the jury room.

7 Don't discuss the case with each other or anyone else.
8 We are coming upon a weekend. I imagine that some of you will
9 be spending time with family and friends. I hope you enjoy
10 that. That's wonderful. Don't talk to them about the case.
11 You can tell them you are sitting as a juror in a federal
12 criminal case. That is all you should tell them. Don't tell
13 them what it's about. Don't tell them anyone's names. Don't
14 tell them anything about it. The day will come not too long in
15 the future where that restriction will be lifted and you can
16 tell anybody anything you want. Not yet.

17 Please don't discuss the case with each other or
18 anyone else. Don't do any research about the case and continue
19 to keep an open mind. You have now heard all of the evidence,
20 but you haven't heard the lawyers' closing arguments, and I
21 told you that's an important part of the case and very helpful
22 in helping you come to whatever conclusions you ultimately come
23 to, and you haven't heard my instructions about the law. So it
24 is still very important that you keep an open mind.

25 With that, I wish you a wonderful and pleasant

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1 weekend. Safe travels, and please be here Monday, no later
2 than 8:45, and hopefully we'll get off to a prompt start at
3 9 o'clock.

4 Thank you very much. Have a great weekend.

5 (Jury excused)

6 THE COURT: You may be seated. All right. So let's
7 talk about the issue that we were discussing at sidebar.

8 Mr. Miller, I appreciate your representation about
9 your representation, and let's put that aside. Which is to say
10 that I trust and believe that you didn't make any
11 misrepresentations to me.

12 Be that as it may, I'm concerned that, based on the
13 testimony I heard on cross, there is at least a possibility
14 that the information conveyed by counsel was a necessary part
15 of his analysis in reaching the conclusion and opinion that he
16 testified to. If so, then I think it should not have been
17 offered or admitted. If not, if separate and apart from
18 whatever you may have told him, he could have come to that
19 conclusion, and it's not a necessary step, then perhaps we
20 leave it be.

21 MR. MILLER: So if I may, your Honor. I would like to
22 walk your Honor through exactly what happened.

23 One aspect of the technology that one of my co-counsel
24 reminded me about. So, it was our understanding, in talking to
25 Dr. Edman, particularly in the last few days, that based on his

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1 analysis in looking at the blockchain and looking at the
2 Etherscan records, that the movements between the addresses
3 were -- even without looking at anything, were consistent with
4 a grouping for two wallets. And the first one was Meta Mask,
5 he believed, based on looking at some stuff, including the
6 Etherscan records, identified Meta Mask, which you heard on
7 direct examination.

8 Second, that usually it is a common practice that
9 second wallet would usually be a cold storage wallet. Now,
10 these cold storage wallets, it is our understanding the way it
11 works, is it is like a USB plug-in, but the address is actually
12 on the ledger itself.

13 (Continued on next page)

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N4SKCHA2

Edman

1 MR. MILLER: (Continuing) So part of him being able
2 to verify that it was, in fact -- I'm sorry. My apologies.
3 The MetaMask info was not on Etherscan, it was on OpenSea
4 itself, but identifying it as from MetaMask.

5 But the cold storage device itself has the address on
6 it, so that in order to match it up, that it is actually an
7 address from a cold storage device, you have to physically see
8 the device itself.

9 So that is why he looked at Mr. Chastain's laptop,
10 which, again, was information that the government had in its
11 possession, as I represented to the Court, and included on the
12 laptop itself, my understanding is there's software about the
13 cold wallet.

14 And so, ultimately, he looked -- I told him to come
15 into our offices, that Mr. Chastain was going to open up his
16 laptop, verify that, in fact, these addresses were on that
17 MetaMask wallet, which he did, and then verify the cold wallet,
18 the USB device, had that address on it. That is exactly what
19 happened.

20 And if, frankly --

21 THE COURT: Mr. Miller, let me just stop you, because
22 do you disagree with what I have said? If it is a necessary
23 part of his analysis, and he relied on a communication from
24 either you or Mr. Chastain, whether verbal or otherwise, in
25 forming his opinion, I think that that would render the opinion

N4SKCHA2

Edman

1 inadmissible.

2 Do you agree with that? Putting aside whether that is
3 accurate.

4 MR. MILLER: I'm not sure, respectfully, your Honor,
5 that I do agree with that.

6 THE COURT: All right.

7 MR. MILLER: I think it goes to weight.

8 THE COURT: Well --

9 MR. MILLER: Because, your Honor, certainly,
10 government counsel ably cross-examined Dr. Edman about that,
11 and, obviously, the jury heard, clearly, that there was some
12 involvement in him looking at Mr. Chastain's device.

13 THE COURT: Do you have authority for the proposition
14 that that goes to weight? Because I would think unless I tell
15 the jury that the expert is not permitted to rely on
16 information that counsel gave, that -- I don't know how they
17 are able to evaluate the opinion and understand what it was
18 based on. Do you have authority for that proposition?

19 MR. MILLER: I will certainly check, your Honor. But
20 the only thing I will mention, again, is it was our
21 understanding, prior to putting Dr. Edman on the stand, that
22 even without physically seeing the cold wallet device and the
23 address on the device, it was our understanding that, from his
24 view of the transactions, that it was consistent with two
25 wallets. That's what we were told.

N4SKCHA2

Edman

1 THE COURT: So, putting aside the question I asked and
2 your answer and whether you have authority for that
3 proposition, that is a different question, that is a fact
4 question, of whether the information that you conveyed to him
5 was necessary to forming his opinion. That is a different
6 question. I'm inclined to think, let's get him on the stand,
7 and both sides can inquire about that, and then we'll have a
8 more fulsome record on this issue, and then the parties can
9 argue as to what belief, if any, should be granted.

10 In other words, if I had understood before Dr. Edman
11 testified that this might be part of the chain of what
12 permitted him to reach the opinion, number one, I might have
13 precluded the testimony, but, at a minimum, in order to discern
14 whether it was, I might have had a hearing outside the presence
15 of the jury. Obviously, it's better to do that before the jury
16 hears evidence, but, based on your representations, I didn't do
17 it in that order.

18 I'm inclined to think we should now do that, and then
19 it may be that we leave well enough alone, and there's nothing
20 to be done, but at least both sides will have an opportunity to
21 make whatever arguments they want about it.

22 MR. MILLER: That's fine, your Honor.

23 THE COURT: All right.

24 Any objection from the government?

25 MS. NICHOLS: Your Honor, I actually think the Court

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Edman

1 has heard enough. I think it's come in clearly what happened.
2 And I, too, credit Mr. Miller when he says that he didn't
3 understand that that was part of Dr. Edman's analysis or a
4 necessary part of it, but I think that it's now clear that it
5 was.

6 So I'm not sure that an ex post --

7 THE COURT: I disagree only because I don't think the
8 question that you asked him makes clear whether it was a
9 necessary part of the analysis, that is to say, absent the
10 information that Mr. Miller conveyed, he could have and would
11 have reached the same conclusion. If he is prepared to and
12 does say that, then I'm inclined to think, that question and
13 answer aside, the opinion could have been offered, and there's
14 probably no relief to be granted here.

15 But if he clarifies that it was a necessary part, then
16 I think we're in a different territory.

17 So I think that's the part we need to clarify.

18 MS. NICHOLS: Understood.

19 MR. MILLER: Sorry, just for the record, your Honor,
20 again, it was our understanding that his analysis of the
21 records, independent of physically coming into our office, was
22 consistent with the fact that there was likely two wallets that
23 were involved.

24 THE COURT: I got it. Let's get him on the stand, and
25 you can elicit that from him.

N4SKCHA2

Edman

1 In the meantime, on the theory that you guys have
2 multiple people and can do multiple things at a time, I'm going
3 to expedite things and have my law clerk give you the draft
4 jury charge - I'll give three copies to each side - and you can
5 start reviewing that, and then we'll discuss timing about the
6 charge conference.

7 Dr. Edman, if you can come back to the witness stand,
8 please.

9 Dr. Edman, thank you.

10 For these purposes, you remain under oath.

11 Mr. Miller, do you want to inquire first? Actually,
12 you know what, I will inquire.

13 Dr. Edman, earlier, Ms. Nichols asked you a question
14 about -- you indicated that counsel - I assume Mr. Miller, but
15 one of Mr. Chastain's lawyers - advised you that the cold
16 storage wallet, whatever it's called, belonged to Mr. Chastain,
17 correct?

18 THE WITNESS: Correct.

19 THE COURT: And then Ms. Nichols asked you a question
20 immediately thereafter. You said that you determined that the
21 defendant had two wallets based on your own analysis, and then
22 the question was: And based on the fact that defense counsel
23 told you that the cold storage device belonged to the
24 defendant, right?

25 Your answer was: Correct.

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Edman

1 Can you explain to me what role that information
2 played in forming your opinion? In other words, what part did
3 the information that counsel conveyed to you play in your
4 opinion?

5 THE WITNESS: So, counsel's representation that the
6 cold storage device belonged to Mr. Chastain really doesn't
7 play a role in my opinion. My opinion is that there were two
8 wallets, and that's based on a technical analysis and not a
9 representation made by counsel.

10 THE COURT: Okay.

11 I guess to ask the question differently, had counsel
12 not shared that information with you, would you have been able
13 to reach that same conclusion? And, if so, can you explain
14 how?

15 THE WITNESS: So I would have been able to reach the
16 conclusion that there were two separate wallets without that
17 information, and, really, without even inspecting the ledger
18 device itself, simply by inspecting the MetaMask wallet and the
19 addresses contained within it. I know that based on how
20 addresses are generated within a MetaMask wallet, if the
21 address associated with the ledger is not in that wallet, then,
22 therefore, it belongs to a different wallet.

23 So the logical conclusion is that there are two
24 wallets.

25 THE COURT: All right.

N4SKCHA2

Edman

1 So, when you answered "Correct" to Ms. Nichols'
2 question, that your opinion, your analysis, was based, in part,
3 on the fact that defense counsel had told you that the cold
4 storage device belonged to the defendant, can you explain what
5 role that did play?

6 THE WITNESS: That information would have only played
7 a role in my analysis to the extent that, based on that, I can
8 say, or reasonably believe, that the second wallet, the
9 non-MetaMask wallet, belonged to Mr. Chastain, other than
10 seeing him unlock it, which requires a PIN code, but it doesn't
11 change my opinion that there were two separate wallets.

12 THE COURT: So, in other words, it was that
13 information that you were relying on to link the two wallets to
14 Mr. Chastain? I'm not sure I understand precisely what role
15 that information conveyed by counsel played.

16 THE WITNESS: Yeah, so maybe there are two separate
17 issues.

18 One is how many wallets are there, and based on
19 technical analysis alone, I can say that there are two.

20 THE COURT: Keep your voice up. Go ahead.

21 THE WITNESS: And then second is ownership of those
22 wallets. Based on inspecting Mr. Chastain's laptop, I believe
23 the MetaMask belongs to him based on -- well, one, seeing
24 Mr. Chastain unlock the ledger cold storage wallet, there's
25 reason to believe that it belonged to him. But also, to an

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Edman

1 extent, representation by counsel that that is Nate's ledger
2 device could play a role in that conclusion, but not the fact
3 that there are two separate wallets.

4 THE COURT: If I understand correctly, you could
5 determine, without any information conveyed by counsel or
6 Mr. Chastain, whether orally or by unlocking the device, that
7 the transactions involved in this case that you were asked to
8 analyze, that they involved two wallets; is that correct?

9 THE WITNESS: I needed to inspect the MetaMask wallet
10 to confirm that there were two separate wallets. But, also,
11 the transaction analysis strongly suggests that analyzing the
12 MetaMask wallet simply confirms that.

13 THE COURT: But just listen to my question.

14 You could, and did, reach that conclusion without
15 relying on any information conveyed by counsel or Mr. Chastain,
16 whether orally or by virtue of unlocking the device or anything
17 of that sort; is that accurate?

18 THE WITNESS: That is accurate.

19 THE COURT: So the portion of your opinion that you
20 said was based on the fact that you were told that it was his
21 device and/or your seeing that he unlocked it, that enabled you
22 to link the two wallets to the defendant; is that what you're
23 saying? In other words, you relied on it for attribution, not
24 for the fact that there were two wallets involved in the
25 transactions that you were asked to look at?

N4SKCHA2

Edman - Recross

1 THE WITNESS: Correct.

2 THE COURT: Okay.

3 Counsel, any follow-up?

4 MS. NICHOLS: Should I inquire or just --

5 THE COURT: If you want to, yes. I'm giving you that
6 opportunity.

7 MS. NICHOLS: Thank you, your Honor.

8 RECROSS EXAMINATION

9 BY MS. NICHOLS:

10 Q. So, Dr. Edman, when you are looking at information from
11 Etherscan transactions, you can tell if the wallet address is
12 likely associated with MetaMask, right?

13 A. Simply by looking at Etherscan? No.

14 Q. Okay. So how were you able to tell that some of the wallet
15 addresses were MetaMask addresses?

16 A. Two reasons principally.

17 One is inspecting the addresses associated with
18 Mr. Chastain's MetaMask wallet on his laptop, I was able to
19 confirm that those addresses were associated with the MetaMask
20 wallet, with a single MetaMask wallet.

21 Additionally, the records produced by OpenSea in this
22 matter associates wallet addresses with what's in the documents
23 they term a wallet -- a Web3 wallet provider, which identifies
24 the wallet as MetaMask.

25 Q. Okay. So I want to focus on that second part.

N4SKCHA2

Edman - Recross

1 So the documents produced by OpenSea tell you that
2 some of the wallet addresses are associated with MetaMask,
3 right?

4 A. Correct.

5 Q. And am I right that some of them were not associated with
6 MetaMask, right?

7 A. Correct.

8 Q. So you understood that there was like a potential universe
9 of some MetaMask wallet addresses and some non-MetaMask wallet
10 addresses, right?

11 A. Correct.

12 Q. And it was your hypothesis, or supposition, that the ones
13 that were not MetaMask would likely be associated with a cold
14 storage device, right?

15 A. Based on the pattern of transactions, it appeared that
16 there were two wallets, one of which was likely a cold storage
17 device. The transaction pattern wouldn't make sense if both
18 were a hot wallet.

19 Q. But in order to determine whether that pattern was --
20 whether the hypothesis that you formed associated with that
21 pattern was true, you had to actually inspect the cold storage
22 device provided by counsel, right?

23 A. I had to inspect the MetaMask wallets to determine the set
24 of addresses associated with that wallet, the addresses not
25 associated with that wallet, which, in actuality, was just one

N4SKCHA2

Edman - Recross

1 address, is clearly associated with a separate distinct wallet.

2 Q. So you were able to tell before -- I'm asking you to stick
3 to the part before you go to counsel's office and look at the
4 two wallets. Okay?

5 Before that, you were able to tell that some of these
6 are MetaMask and one of them is not; is that right?

7 A. I'm able to determine that some of them are associated with
8 MetaMask, and I believe there was more than one address that,
9 in the OpenSea records, did not have a Web3 wallet provider
10 associated with it. And so by analyzing Mr. Chastain's
11 MetaMask wallet, it allowed me to say which of those addresses
12 were indeed associated with the MetaMask wallet.

13 Q. Let's take it step by step. I want to go before you looked
14 at Mr. Chastain's wallets in the presence of counsel, before
15 that period of time, before you got that information, am I
16 right that you understand that some of the wallet addresses are
17 associated with MetaMask and some of them are not, right?

18 A. Correct.

19 Q. And then you go, and you look at the wallets that are
20 provided by counsel, and you're able to essentially
21 reverse-engineer the analysis, correct? Like you're able to
22 say, okay, all of the MetaMask addresses are in a MetaMask
23 wallet and all of the non-MetaMask are in a non-MetaMask
24 wallet?

25 A. I'm sorry, can you restate that?

N4SKCHA2

Edman - Recross

1 Q. Sure.

2 You were shown two wallets in counsel's office,
3 correct?

4 A. I reviewed two wallets, yes.

5 Q. And upon reviewing those wallets, you were able to
6 determine, I think, two things - one, all the MetaMask wallet
7 addresses that you had looked at were, in fact, in the MetaMask
8 wallet that you were being shown, correct?

9 A. Correct.

10 Q. And that led you to conclude that there was only one
11 MetaMask wallet associated with those transactions, right?

12 A. Correct.

13 Q. And all of the non-MetaMask wallet addresses that you had
14 looked at prior to coming to counsel's office, you determined
15 that those were found on the defendant's ledger device, right?

16 A. No.

17 Q. One of the wallet addresses was found on the ledger device,
18 correct?

19 A. Correct.

20 Q. And so before you walked into counsel's office, you were
21 not able to determine, based on looking at the blockchain, how
22 many wallets were involved in those transactions, right?

23 A. Not entirely. Based on analyzing the transactions on the
24 blockchain, and the pattern of transactions, it seemed
25 reasonable that there were two separate -- one which likely was

N4SKCHA2

Edman - Recross

1 a cold storage device. In addition to analyzing the OpenSea
2 records, I was able to determine a set of addresses associated
3 with a MetaMask wallet, as well as a small number of addresses
4 that did not have a wallet attribution.

5 Q. And your supposition that the one was likely associated
6 with a cold storage wallet is based on your expertise, in part,
7 right?

8 A. Correct, my expertise and my analysis of the blockchain
9 transactions.

10 Q. But until the defendant used his password to unlock the
11 cold storage device in the office, you were not able to
12 determine that, in fact, that wallet address was associated
13 with that particular cold wallet, correct?

14 A. Correct. Though, for the purposes of my opinions, it
15 doesn't particularly matter whether that address was associated
16 with that specific ledger, only that there were two separate
17 wallets.

18 Q. And your knowledge that the defendant's ledger was a cold
19 storage device was informed by your looking at the device in
20 counsel's office, right?

21 A. And my analysis of the blockchain transactions, where there
22 were a group of addresses that had transactions among them, and
23 then all of those addresses either received funds or sent funds
24 back to the same singular address, which is often indicative of
25 a cold storage wallet.

N4SKCHA2

Edman - Recross

1 Q. Well, let me ask it differently.

2 If you hadn't been in a room with counsel and the
3 defendant and the cold storage device, would you have been able
4 to offer an opinion, based on your review of the blockchain,
5 that that wallet address was definitely from a cold storage
6 wallet?

7 A. I think with a reasonable degree of certainty, based on my
8 review of the transactions and my experience conducting
9 cryptocurrency analysis; however, in terms of saying absolutely
10 definitely 100 percent that address is associated with a cold
11 storage device, I'm not sure that I would be able to come to
12 that degree of certainty.

13 THE COURT: Let me refine that a little bit.

14 Let's say you came into a room, and there were four
15 cold storage devices there, and nobody told you anything about
16 them. Could you look at those and connect them to the
17 transactions that you examined from other sources and connect
18 them without anyone telling you anything about those cold
19 storage devices? In other words, could you, by looking at them
20 and forensically examining them, say, this is totally unrelated
21 to these transactions, oh, look, these match these
22 transactions?

23 THE WITNESS: Presuming that someone -- that I had the
24 information available to me to unlock them -- usually they
25 require a numeric PIN to unlock -- assuming that was available

N4SKCHA2

Edman - Redirect

1 to me, then, yes, I could do that analysis.

2 THE COURT: All right. Thank you.

3 You can probably leave it there, unless, Mr. Miller,
4 you want to ask some questions as well.

5 MR. MILLER: I think that's fine.

6 Just one thing:

7 I'm not sure if we can just lead or if you want me to
8 ask open questions.

9 REDIRECT EXAMINATION

10 BY MR. MILLER:

11 Q. One part of this that I don't think was discussed, and,
12 that is, before you came into our offices, when you saw that
13 the OpenSea records indicated that at least a good number of
14 these addresses were from MetaMask, do you recall telling us
15 that they were likely all from the same MetaMask wallet because
16 it wouldn't make sense to have another MetaMask wallet?

17 A. I do, yes.

18 Q. Okay.

19 A. I do believe I mentioned that already.

20 Q. Before you --

21 MR. MILLER: Sorry?

22 THE COURT: I didn't hear that. You said I believe I
23 mentioned that already?

24 THE WITNESS: I believe so, where, based on my
25 analysis, it's reasonable to conclude that the address to which

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1 all of the funds were sent and received from the MetaMask
2 wallet would likely be a cold storage wallet. It wouldn't make
3 much sense to have a second MetaMask wallet.

4 THE COURT: All right.

5 Can we let Dr. Edman go?

6 MR. MILLER: Yes, thank you.

7 THE COURT: All right. You may step down. You're
8 excused at this time.

9 (Witness excused)

10 THE COURT: All right.

11 First, as to that, I'm inclined to say that suffices
12 and leave it as is. Obviously, the cross-examination raised
13 concerns, but I think that puts my mind at ease, at least --
14 poorly timed window cleaning.

15 But, obviously, there are some technical complications
16 here. Maybe I'm not understanding everything. The bottom line
17 is if the government thinks there is relief to be had, you can
18 tell me now. If you don't, we can move on. Or if you do, if
19 you want an opportunity to brief it, you can submit a letter to
20 me, let's say, by 6:00 p.m. tomorrow.

21 So, what's your thinking? Now, let me also say more
22 broadly, as I said at sidebar, maybe there is more significance
23 to this than I see, and I know you guys have been dwelling on
24 the distinction between wallets and wallet addresses, but,
25 honestly, at the end of the day, I find it hard to imagine that

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1 the jury is going to understand why that's significant, let
2 alone care. I think if they think that Mr. Chastain was
3 engaging in these transactions through wallets or wallet
4 addresses in an effort to conceal proceeds of wire fraud, I
5 suspect they will convict him. If they do not find that, I
6 suspect that they will not convict him. And I don't think it's
7 going to turn on this distinction, but I could be wrong, and
8 those are the arguments for you to make.

9 So, government, you can also sit on it and submit
10 something in writing by 6:00 p.m. tomorrow if you want to think
11 about it.

12 MS. NICHOLS: That's what I was going to propose, your
13 Honor. I'm not sure we'll have a letter, but if we do, it will
14 be by 6:00 p.m. tomorrow.

15 THE COURT: All right.

16 Then I want a response by 2:00 p.m. on Sunday if the
17 government does file anything. If the government doesn't file
18 anything, then I will assume that everyone has agreed to move
19 on and that I raised all this trouble for no particular reason.
20 That's not true, but I'll leave it there.

21 All right. Charge conference: It's 10:26. Since
22 you've gotten a jump on it, and it's relatively short, can we
23 reconvene at 11:15? Does that give you enough time?

24 MR. FILOR: Any chance we can do 11:30?

25 THE COURT: We'll do 11:30, but let me say a few

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1 things.

2 First, I have considered your submissions, including
3 your submissions last night. You should, for purposes of
4 preserving any objections, renew your -- identify anything that
5 is not consistent with what you submitted last night that you
6 want to preserve an objection to. But suffice it to say that I
7 have given your submissions careful consideration, and I'm not
8 likely to reconsider because the issues have been fully aired.
9 So, again, you should preserve your objection, but I'm not
10 going to engage in argument on those points.

11 So, that will hopefully speed things along.

12 Number two, here's how it will work: I've given you a
13 draft of the charge with respect to substantive instructions.
14 It includes annotations, which identify what I relied on for
15 those purposes. When we finalize this, and I give it to the
16 jury on Monday, the annotations will come out, but, otherwise,
17 it will remain as is.

18 I'll begin with the government and then the defense.
19 In each case, I will expect you to go through and identify page
20 and line number – that's why there are line numbers in here, to
21 facilitate this – any objection you have or correction you
22 have, identify the page, the line number, and it's incumbent on
23 you not only to identify the problem, but also propose a
24 solution; that is to say, to the extent you have an objection
25 or you think that it ought to be changed, you should have

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1 specific language that you're recommending, and to the extent
2 that you think it is legally required, be prepared to cite
3 authority for that proposition.

4 I can't remember what I was about to say, but the
5 bottom line is that's how we will proceed.

6 Any questions about that?

7 MS. NICHOLS: No, your Honor.

8 MR. FILOR: No questions, your Honor. Thank you.

9 THE COURT: All right.

10 Have you guys figured out what we're doing on the
11 evidentiary front with respect to submitting things to the
12 jury? Are we squared away on that?

13 MS. NICHOLS: Your Honor, I'm not sure if we talked to
14 defense counsel about that, but we I think expect to have a
15 clean laptop that we could submit, and we have been conferring
16 nightly about the exhibits. So I think it will be very
17 straightforward to get that together.

18 THE COURT: All right.

19 Why don't you guys do that while everyone is together
20 today so everyone is on the same page, and make sure that by
21 Monday morning, we have assembled it.

22 Who is closing on Monday for each side?

23 MR. BURNETT: I am, for the government, your Honor.

24 MR. FILOR: Your Honor, I'm going to do it.

25 Mr. Miller is allowing me the opportunity.

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1 THE COURT: Okay. Very generous of him.

2 And rebuttal?

3 MS. NICHOLS: That's me, your Honor.

4 THE COURT: Do we have estimates on length of the
5 principal summations?

6 MR. BURNETT: Still in flux, your Honor. Right now,
7 it's somewhere between an hour and 15 and an hour and 30.

8 THE COURT: Mr. Filor?

9 MR. FILOR: He's got the jump on me, I haven't started
10 it, but that sounds about right. Thank you, your Honor.

11 THE COURT: All right.

12 Ms. Nichols, I assume up to a half hour?

13 MS. NICHOLS: Yes, your Honor.

14 THE COURT: Great.

15 We'll see you at 11:30. Thank you.

16 COUNSEL: Thank you, your Honor.

17 (Recess)

18 THE COURT: Please be seated. Welcome back.

19 Starting with the government, any objections or
20 corrections? And I think I remember the thing that I meant to
21 say and had my law clerk convey it, but to the extent that you
22 found any typos or any corrections, I would appreciate your
23 bringing those to my attention, too, since having six
24 additional sets of eyes read these is always helpful.

25 So, page and line number, please.

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1 MR. BURNETT: Yes, your Honor.

2 So starting with some that are just nonsubstantive,
3 the first one is page 3, line 18.

4 THE COURT: Yes.

5 MR. BURNETT: We were considering proposing adding,
6 "unless and until you determine that the government proves
7 beyond a reasonable doubt."

8 THE COURT: Any objection to that from the defense?

9 MR. MILLER: No. Thanks.

10 THE COURT: All right. We will make that change.

11 Next?

12 MR. BURNETT: The next one, also nonsubstantive, is
13 page 7, lines 18 to 19.

14 THE COURT: Okay.

15 MR. BURNETT: The sentence here that you are not
16 required to accept uncontradicted testimony, we just noticed it
17 showed up twice. It's fine if you want to have it twice, but
18 we're flagging it in case it wasn't something that was
19 intended.

20 THE COURT: Where is the other place?

21 MR. BURNETT: The other one was page 10, lines 14 to
22 15.

23 THE COURT: I appreciate your pointing that out. I'd
24 be inclined to delete it on page 10, on the theory that it's
25 more appropriate in the general instructions about credibility

N4SKCHA2

1 of witnesses.

2 MR. BURNETT: That makes sense.

3 THE COURT: Any objection to striking it on page 10,
4 from the defense?

5 MR. MILLER: No. Thank you, your Honor.

6 THE COURT: All right. Next?

7 MR. BURNETT: The next one? Page 11, lines 6 and 7,
8 there were no testimonial stipulations, so we were thinking of
9 deleting from "or" through "live testimony."

10 THE COURT: All right.

11 Any objection to that from the defense?

12 MR. MILLER: No. Thank you, Judge.

13 THE COURT: Okay. We'll make that change.

14 Next?

15 MR. BURNETT: The next one was page 3. The searches
16 and seizures instruction, we realize that because the way the
17 stipulation on the evidence from the defendant's phone was
18 written, there's actually no evidence before the jury that
19 there was ever, like, a search or seizure by the government in
20 the case. It just said these records come from the defendant's
21 cell phone. So we didn't necessarily want to flag a search
22 issue for the jury that they may not necessarily be thinking
23 about to begin with.

24 We were thinking maybe just replacing this with an
25 instruction that all of the evidence presented to you in this

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1 case was lawfully obtained, and then whether you approve or
2 disapprove of how the evidence was obtained should not enter
3 into your deliberations, period.

4 THE COURT: All right. Before we get into the
5 particulars, Mr. Miller, Mr. Filor, your thoughts?

6 MR. MILLER: I don't think that we have a disagreement
7 that there shouldn't be sort of a --

8 THE COURT: Microphone closer.

9 MR. MILLER: I'm sorry.

10 I don't think we have a disagreement that there should
11 be some detailed instruction about searches and seizures, but
12 I'd be curious to hear the language again that's being
13 proposed.

14 MR. BURNETT: Yes, I think our proposal was to replace
15 the first paragraph with these two sentences: Sentence one is:
16 "All of the evidence presented to you in this case was lawfully
17 obtained." Then sentence two would be: "Whether you approve
18 or disapprove of how the evidence was obtained should not enter
19 into your deliberations."

20 I guess you could flip those, also.

21 THE COURT: Mr. Miller?

22 MR. MILLER: I think that's fine, Judge.

23 THE COURT: What would you title the instructions
24 since searches and seizures is probably not appropriate?

25 MR. BURNETT: Maybe say procurement of evidence.

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1 THE COURT: I'll tell you what - my suggestion would
2 be to move those two sentences to the end of the what is and is
3 not evidence instruction on page 7, line 6, on the theory that
4 it pertains to what is evidence, and just say, "finally, I
5 instruct you that," and then the substance of what Mr. Burnett
6 suggested.

7 Does that make sense?

8 MR. BURNETT: Yes, your Honor.

9 MR. MILLER: Yes, your Honor.

10 THE COURT: All right. "Finally, I instruct you that
11 all of the evidence presented to you in this case was lawfully
12 obtained. Whether you approve or disapprove of how," I'll say,
13 "any evidence was obtained should not enter into your
14 deliberations."

15 MR. MILLER: Sorry, Judge. One point just for the
16 record that I realized I should preserve: Obviously in this
17 case, we did make a motion to suppress early in the case. So
18 I'm just preserving it.

19 THE COURT: Understood. It doesn't waive that.

20 MR. MILLER: Yes.

21 THE COURT: Very good.

22 So I'll strike the search-and-seizure instruction
23 altogether.

24 Next, Mr. Burnett?

25 MR. BURNETT: The next one is just a grammatical

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1 point, on page 16, line 19. Maybe it has some substance to the
2 grammar, but I don't think it's controversial.

3 THE COURT: Keep your voice up. 19, yes?

4 MR. BURNETT: Page 16, line 19. We were proposing
5 editing the beginning of that -- sorry, I guess this begins
6 with "as is pertinent" on line 18. We were proposing revising
7 that sentence to say, "As is pertinent here, the scheme to
8 defraud alleged is fraudulently embezzling," just to make sure
9 the jury concludes or the jury could come up with other fraud
10 theories that are not the theory of the case.

11 THE COURT: I think that probably makes sense.

12 Mr. Miller?

13 MR. MILLER: I think we're fine with that.

14 THE COURT: Okay.

15 I'm going to say, "the alleged scheme to defraud,"
16 just to make it less wordy.

17 MR. BURNETT: Yes.

18 The next one, same page, line 21, the sentence that
19 begins "a person commits," our proposal is to add, "under such
20 circumstances," before that sentence. The reason for that is
21 we want to make sure the point about the defendant being
22 entrusted with the information is clear that it applies to that
23 second sentence, because you could lawfully obtain information
24 without it being entrusted to you.

25 THE COURT: Mr. Miller?

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1 MR. MILLER: Sorry, one moment.

2 (Pause)

3 MR. MILLER: I'm not sure that's necessary, your
4 Honor. I think your Honor's statements here are pretty clear.

5 THE COURT: Mr. Miller, I'm going to ask you again to
6 move the microphone.

7 MR. MILLER: I'm sorry, I keep doing that, Judge.

8 I don't think that's necessary. I think those two
9 sentences are pretty clear.

10 MR. BURNETT: If the defense thinks it's clear, I'm
11 fine leaving it as is.

12 THE COURT: Okay. Next?

13 MR. BURNETT: The next one is page 17, line 12.

14 THE COURT: All right.

15 MR. BURNETT: Our proposal would be to change "written
16 company policies" to "written company policies and agreements."
17 I guess starting with the legal authority, I think Mahaffy is
18 clear that the list of factors that it lists out there can be
19 adapted for case-specific purposes, and I think our concern is
20 that policy has sort of taken on a specialized meaning in this
21 case because there are policies the company announced, but then
22 they had their agreement before. So we want to make sure it
23 doesn't give the impression that you should consider policies,
24 but not something else like an agreement.

25 THE COURT: All right.

N4SKCHA2

1 I assume there's no dispute that the jury can consider
2 the agreement, Government Exhibit 214, Mr. Miller, in
3 evaluating whether the information is confidential.

4 Is that correct?

5 MR. MILLER: I think that's right, Judge.

6 THE COURT: Given that, any objection to the proposed
7 change?

8 MR. MILLER: I see where your Honor is going. I'll
9 just say, obviously, *Mahaffy* says what it says, we think it
10 should be relied on, but I understand where you're going.

11 THE COURT: *Mahaffy* is quite clear that its list is
12 not exhaustive for all purposes, and it should be adapted to
13 particulars of a case here. I think that agreement is central
14 to the parties' argument, so I think it's appropriate for the
15 jury to know that it may consider that in the analysis. So I
16 will add "and agreements" after "policies."

17 Next?

18 MR. BURNETT: The next one is page 19, line 3.

19 THE COURT: All right.

20 MR. BURNETT: So after the sentence that ends
21 "victims' money or property," we would include adding the
22 following sentence: "Depriving a property owner of its
23 exclusive right to use the property, even if temporarily, is a
24 form of harm."

25 To explain, I think, as has sort of been previewed

N4SKCHA2

1 through defense questions, I expect there will likely be an
2 argument during closing that Mr. Chastain loved OpenSea, had
3 some financial interest in the success of OpenSea, but, in a
4 case like this one, where he's alleged to have misappropriated
5 a property right, the intent to harm the company's property
6 interest is a form of intent to harm, which I think, in a
7 jury's mind, can get confused from the general, like, intent to
8 harm the company. That's, I think, very specifically
9 identified both in *Carpenter* and in *Grossman*. In both cases
10 there, both the Supreme Court and the Second Circuit identified
11 the relevant harm as interfering with the entity's exclusive
12 use of or right to exclusive use of the information at issue.
13 So it's the same instruction here. I'm just making that clear
14 for the jury because it's not an intuitive thing.

15 THE COURT: So, hold on. Before I hear from you,
16 Mr. Miller, I think the point is reasonably well taken, though
17 I'll obviously hear from Mr. Miller, but I'm not sure about the
18 "even if temporarily" language. I think that's appropriate
19 where there is some suggestion that someone takes something,
20 and perhaps at the time intends to repay it or give it back or
21 some such thing, and, you know, that's not a defense to wire
22 fraud. The Avenatti case is a good example of that. I don't
23 think that's the issue here. He either took and
24 misappropriated confidential business information or he didn't.

25 MR. BURNETT: That's fair, your Honor. I don't think

N4SKCHA2

1 the "temporarily" part is central to our concern.

2 THE COURT: All right.

3 So, Mr. Miller?

4 MR. MILLER: We object to that, your Honor. We think
5 the sentence there is appropriately written. There is no
6 reason to start trying to apply it to the government's theory
7 of this case.

8 The issue and the way it's spelled out in the case law
9 is whether or not the defendant contemplated a harm or injury
10 by depriving the victim of its property. That's central to
11 your Honor's instructions. To have a separate sentence that
12 highlights the fact that depriving the property owner of its
13 exclusive property is a form of harm is essentially signaling
14 to the jury, we submit, that in this particular case, the
15 government's theory that what Mr. Chastain allegedly did by
16 taking, supposedly, this information is almost like a
17 derivation of the right to control theory. And we think that
18 that's completely inappropriate.

19 THE COURT: And you think it's an inaccurate statement
20 of the law?

21 MR. MILLER: Well, I certainly have some concerns.
22 Obviously, right now, on the right to control theory, which is,
23 again, about sort of the exclusive depriving a business owner
24 of their exclusive control and access to the information and
25 making discretionary economic decisions, is before the Court.

N4SKCHA2

1 So I don't think this is necessary.

2 THE COURT: You're mixing apples and oranges. The
3 sentence literally says "depriving a property owner of its
4 exclusive right to use the property." That still requires a
5 property interest; it's not just a right to control.

6 MR. MILLER: True. But I fear that this is going to
7 confuse the jury when the sentence was clear as written. I
8 don't think this is necessary.

9 THE COURT: Mr. Burnett?

10 MR. BURNETT: I think on the right to control issue,
11 that's a totally separate line of cases, and even in the
12 briefing before the Supreme Court, the appellant there was
13 distinguishing types of cases where a property right is harmed
14 in the sense of these *Carpenter* line of cases. The reason why
15 I think it's important is because I don't think it's intuitive
16 or known really at all to nonlawyers that property is
17 essentially a bundle of rights, including the right to
18 exclusive use, so taking away one of those sticks in the bundle
19 is inflicting harm on the property interest. I think it's
20 entirely likely that without this instruction, the jury could
21 reasonably be confused that, hey, OpenSea still got to put up
22 their featured NFT, so no harm there, Mr. Chastain loved the
23 company overall, so there couldn't possibly be intent to harm
24 the company, and proceed from that line of thinking, which
25 would be going from a legally wrong premise.

N4SKCHA2

1 THE COURT: I agree. I'm going to do it not as an
2 independent sentence, but following a semicolon at the end of
3 the word "property" on line 3, semicolon, "depriving a property
4 owner of its exclusive right to use property is a form of
5 harm."

6 Next?

7 MR. BURNETT: The next is page 22, lines 16 and 17.

8 THE COURT: Yes.

9 MR. BURNETT: So this might be one that already falls
10 into the category of something that you might have considered
11 from our previous instructions. We think under the revised or
12 amended definition of proceeds in 1956, it's wrong to include
13 the profits there because profits is not part of the statute.

14 We would propose --

15 THE COURT: Maybe I'm not up to date on this. I read
16 *Quinones* -- is there something that postdates *Quinones* that
17 speaks to this?

18 MR. BURNETT: My understanding is that 1956(c)(9)
19 postdates *Quinones*. I have to double-check the timing there,
20 but that's what I had in my notes.

21 THE COURT: (c)(9)?

22 MR. BURNETT: Yes, the definition of proceeds.

23 THE COURT: When do you think it was added? There is
24 a (c)(9), and it does seem to speak to this, and it does seem
25 to address the issue that is discussed in *Quinones* and *Santos*.

N4SKCHA2

1 Do you have a sense of when that might date to?

2 MR. BURNETT: *Quinones* is 2011.

3 We're just checking.

4 (Pause)

5 MR. BURNETT: So the statute looks like it was 2009.

6 *Quinones* was decided in 2011. Mr. Roos just pointed out we're
7 actually not sure when *Quinones* was charged, which would have
8 been the relevant point for that case, although there, the
9 Court held that 1956 is not limited to profits either. So I
10 think our view is that *Quinones* is consistent with this version
11 of the statute.

12 THE COURT: Do you know if there are any cases that
13 have addressed this post the amendment?

14 MR. BURNETT: I don't believe there have been any in
15 the Second Circuit, your Honor. I know there have been
16 out-of-circuit cases, but I apologize, I don't have a citation
17 at the ready.

18 THE COURT: So let me ask you: Obviously, I'll hear
19 from the defense depending on your answer — given the language
20 of the statute — and I confess that I missed that it had been
21 amended after *Quinones*, I think there is a reasonable argument
22 for instructing the jury that proceeds -- I take it your point
23 is that proceeds can include the NFTs themselves, not just
24 money?

25 MR. BURNETT: That's right.

N4SKCHA2

1 THE COURT: So maybe that's right. I guess my
2 question is: Does it really matter in this case? Which is to
3 say, to the extent that that is an unsettled question, it
4 obviously raises an appellate issue in the event of a
5 conviction. My gut is, if the jury finds -- somebody in the
6 back is holding something up. I don't know if you were looking
7 for my attention or -- okay.

8 My gut is if the jury -- the transactions here were
9 basically all combined, which is to say, if the jury finds that
10 the transactions were done to conceal the source, et cetera, of
11 the proceeds, I suspect it's not going to matter whether they
12 are considering them to be the NFTs or the money, Ether,
13 whatever it may be. If I add this, then it's not clear whether
14 the jury is relying on the NFTs or on the Ether, and then
15 there's a potential appellate issue that may not be necessary,
16 given that I'm not sure there's a distinction that matters for
17 this case.

18 So, I guess that's a long way of saying, do you want
19 to press the point? If you do, I'll hear from the defense, and
20 then I'll ultimately decide whether you're correct, but I just
21 wonder if it's worth it.

22 MR. BURNETT: Let me just confer quickly, your Honor.

23 THE COURT: Yes.

24 (Pause)

25 MR. BURNETT: Your Honor, I think we're fine leaving

N4SKCHA2

1 it as is, just so the record is clear on the issue.

2 Apparently, Quinones was charged before the amendment and noted
3 it in a footnote, but that's the way it shook out.

4 THE COURT: Yes, my clerk brought that to my
5 attention. I overlooked it, but footnote 4 does say that
6 Congress amended it in 2009, but it was applying the
7 preamendment law.

8 So, to be clear, you're fine with the language as is,
9 and recognizing that in a different case, you might take a
10 different position, given the amendment, you're fine with --

11 MR. BURNETT: Yes, your Honor.

12 THE COURT: Okay. Next?

13 MR. BURNETT: The next one is page 23, line 18.

14 THE COURT: Yes.

15 MR. BURNETT: We propose changing "disguise the true
16 origin" to "disguise the true origin or ownership of the
17 property in question." And I think there's a typo changing the
18 "or" that's in there to an "of."

19 THE COURT: All right.

20 Mr. Miller?

21 MR. MILLER: I'm not sure that I have seen that in any
22 of the precedent or instructions we've looked at before.
23 Unless I'm missing this, I don't think that's in the statute.

24 MR. BURNETT: It's on line 11, Mr. Miller.

25 MR. MILLER: Line, I'm sorry?

N4SKCHA2

1 MR. BURNETT: Line 11.

2 MR. MILLER: Oh, I see, I see.

3 Wait, so you're looking -- I thought we were at 18.

4 MR. BURNETT: That's right. Basically what I'm doing
5 is I'm taking -- page 23, lines 10 and 11, list a number of
6 things. Only origin got translated down.

7 MR. MILLER: I got it.

8 THE COURT: The proposal is on 18 after origin or to
9 add ownership of?

10 MR. BURNETT: Yes.

11 MR. MILLER: I think that's probably fine.

12 THE COURT: Next?

13 MR. BURNETT: The only other thing, your Honor, is on
14 the instruction related to the defense theory of the case,
15 there's a sentence there about hot and cold wallets. We'd just
16 ask that we could reserve on potentially objecting to the
17 sentences related to hot or cold wallets until we file or don't
18 file a letter tomorrow at 6:00 o'clock.

19 THE COURT: All right. Understood. I think that
20 makes sense since it would have some bearing on whether that is
21 a defense theory of the case.

22 Let me just clarify and confirm, assuming that you do
23 not file a letter, or I reject any request for relief, any
24 objection to the instruction that I have here?

25 MR. BURNETT: That's right, your Honor.

N4SKCHA2

1 THE COURT: Okay, great.

2 Any other objections or corrections?

3 MR. BURNETT: No, thank you.

4 THE COURT: That includes the verdict form, I take it?

5 MR. BURNETT: Let me check.

6 Yes, your Honor.

7 THE COURT: All right.

8 Mr. Miller, your turn.

9 And let me just say, obviously, my draft has different
10 language on willfulness. You've made your argument, it's
11 preserved; you don't need to renew that. So, too, on the
12 language that you have requested ostensibly on the basis of
13 *Cuellar*, and I've considered that you've preserved your
14 argument on that, so you don't need to renew that.

15 MR. MILLER: So page 6, lines 10 through 13 or 14, did
16 we have redacted material? My memory is escaping me. I
17 thought there was no redacted material in evidence.

18 MR. BURNETT: I think that's right.

19 THE COURT: So just strike 10 through 13?

20 Okay.

21 MR. MILLER: I guess 10 to 13, yes.

22 THE COURT: The less I read, the better.

23 Next?

24 MR. MILLER: Page 13, line 18 to the beginning of 19,
25 it says, "No adverse inference against the defendant may be

N4SKCHA2

1 drawn," et cetera. We would propose changing that to, "No
2 positive or negative inference, for or against the defendant,
3 may be drawn," rather than it should be highlighting that no
4 adverse inference.

5 THE COURT: Any objection?

6 MR. BURNETT: No objection.

7 THE COURT: All right.

8 MR. MILLER: Page 14 - I think this was a typo - page
9 14, line 10 - it starts on 9, actually - "A verdict of not
10 guilty on Count One, however, requires that you return a count
11 of not guilty." We assume that your Honor meant a verdict of
12 not guilty rather than a count.

13 THE COURT: I did. Thank you.

14 MR. MILLER: This is more by way of preservation. At
15 the bottom on line 22 of page 14, we obviously had proposed a
16 curative instruction on insider trading. Depending upon what
17 the closing arguments are, we still want to preserve that
18 argument, that a curative instruction may be needed.

19 THE COURT: All right. This is my form of a curative
20 instruction. I also would note for the record that, unless it
21 changes in the closings, the government hasn't used the term
22 "insider trading" in this case; only you have.

23 MR. MILLER: Well, to be fair, just again for the
24 record, they did open on inside information, inside edge,
25 stocks, bonds, stock market, et cetera.

N4SKCHA2

1 THE COURT: No dispute there, but the litigation was
2 over the term insider trading, and those words have not come
3 out of the government's mouth in front of the jury.

4 Next?

5 MR. MILLER: Okay.

6 Page 16, lines -- well, it starts at the word "you" on
7 line 15 and goes to "business life of society" on 18. Again,
8 preserving our objection, this was in our letter, we don't
9 believe that the jury should be instructed on departing from
10 traditional notions of fundamental honesty and fair play in the
11 general and business life of society. Respectfully, as we
12 outline in our letter, we think this is not consistent with
13 *Kelly and Cleveland*.

14 THE COURT: All right. I think *Kelly and Cleveland*,
15 for reasons I've already explained, are addressing different
16 issues in a different context. This language comes from the
17 Second Circuit's decisions in *Males* and *Trapilo*, both cited in
18 the annotation consistent with Judge Abrams' instruction in
19 *Tagliaferri*, all of which is to say I think it is an accurate
20 statement of the law, and given that I include somewhere in
21 here — I'm not finding where at the moment — advise the jury
22 that they may not convict Mr. Chastain merely based on a
23 violation of employment policies — it's on page 18, lines 13 to
24 15 — I think it is a fair and accurate instruction.

25 Next?

N4SKCHA2

1 MR. MILLER: Thanks.

2 Page 17, line 3. And I think your Honor previewed
3 this yesterday. Very briefly, I'll note that, in the
4 government's opening, the government said – and I'm just
5 looking at page 48 of the transcript as an example – the
6 government noted that NFTs can sell for thousands or, even in
7 some cases, millions of dollars, and then said it again, why is
8 someone paying thousands or even millions of dollars, and goes
9 on with all the other descriptors that I already explained for
10 your Honor.

11 So, obviously, the government went first, so we don't
12 believe that just because we mentioned that we're not talking
13 about millions or hundreds of thousands of dollars, that
14 somehow that means that the defense put in play that your Honor
15 should instruct the jury that the amount involved need not be
16 large, any amount suffices.

17 THE COURT: All right. I assume that you agree this
18 is an accurate statement of the law?

19 MR. MILLER: It is, your Honor.

20 THE COURT: All right. So I think, given that, and
21 given that both sides have made reference to millions of
22 dollars, it makes sense to make sure the jury understands it.

23 Next?

24 MR. MILLER: Page 17, lines 14 through 16, this is
25 just to preserve. We obviously do believe, and have submitted

N4SKCHA2

1 in this case, that inherent value should be a test under
2 whether or not something is property, to preserve the point.

3 THE COURT: Thanks.

4 Next?

5 MR. MILLER: Your Honor already noted our willfulness
6 preservation, which leads us, I think, to our last point, on
7 page 23, lines 14 through 15. In the context of the purpose
8 instruction, under money laundering, there's a sentence in here
9 that says, "To prove that an act is done knowingly, the
10 government is not required to prove that the defendant knew
11 that his acts were unlawful." Certainly, that sentence is
12 true. The problem that we respectfully submit, your Honor, is
13 that this comes in the context of this instruction, where the
14 paragraph before, it notes that the government has to prove
15 beyond a reasonable doubt that the financial transactions were
16 conducted knowing that the proceeds were from a specified
17 unlawful activity.

18 So the juxtaposition of those two sentences, your
19 Honor, in close proximity, we're concerned could confuse the
20 jury.

21 THE COURT: What's your suggestion?

22 MR. MILLER: We don't think that sentence is
23 necessary, and we would strike it. Your Honor already has
24 discussed what knowingly and willfully mean, and to add this
25 here, we submit, would only add confusion.

N4SKCHA2

1 THE COURT: Mr. Burnett?

2 MR. BURNETT: I actually think the argument proves the
3 opposite. The defendant does not need to have known that the
4 money came from a specified unlawful activity. That's what the
5 second element is.

6 THE COURT: Well, I think he needs to know that it
7 came from some unlawful activity.

8 MR. BURNETT: Right. And that's addressed in the
9 second element. I guess my understanding here is that the
10 fourth element is attempting to instruct the jury that the
11 purpose relates to concealment, not that the defendant's
12 purpose is to do something unlawful in the course of that
13 concealing.

14 THE COURT: How about this: I think Mr. Miller's
15 point is somewhat well taken, in the sense that the government
16 obviously does need to prove that the defendant knew that the
17 financial transactions involved proceeds of some form of
18 unlawful activity. So, in that regard, there is knowledge of
19 some form of unlawful activity that's required, but I think
20 Mr. Burnett's point is well taken that this is in connection
21 with a different element.

22 So what about – I'm just thinking out loud here – if
23 at the beginning of the relevant sentence – this is page 23,
24 line 14 – I were to say, "For purposes of this element, to
25 prove that an act is done knowingly, the government is not

N4SKCHA2

1 required," et cetera? In other words, to make it specific to
2 this element or to put it at the end of the initial clause, "to
3 prove that an act is done knowingly for purposes of this
4 element."

5 MR. BURNETT: I think that's fine from the
6 government's perspective, your Honor.

7 MR. MILLER: I'm sorry, one moment, your Honor?

8 (Pause)

9 THE COURT: Mr. Miller?

10 MR. MILLER: Your Honor, I think that is probably
11 fine. Obviously, your Honor could say element only for
12 purposes of this element only, or something to that extent,
13 but, otherwise, I think it's probably fine.

14 THE COURT: Okay. I'm just going to leave it for
15 purposes of this element, in part, because I think, for Count
16 One's purposes, the same is true, and I do not want to suggest
17 by implication that it's not.

18 Any other objections or corrections, Mr. Miller?

19 MR. MILLER: No, I think that's it for us, Judge.

20 THE COURT: And the verdict form looks okay as well?

21 MR. MILLER: Yes.

22 THE COURT: Very good.

23 Anything else to discuss?

24 MS. NICHOLS: Thank you, your Honor.

25 I just wanted a little clarification on the schedule.

N4SKCHA2

1 Your Honor anticipates sitting 9:00 to 5:00; is that right, and
2 would not offer the jury the opportunity to sit later than
3 5:00, just for our planning purposes?

4 THE COURT: I would not.

5 MS. NICHOLS: Okay.

6 THE COURT: Out of deference to the court reporter, my
7 staff, and the jury, yes.

8 So we'll begin promptly at 9:00 with openings. I do
9 expect at that time you'll be able to represent that everyone
10 is in agreement about how the evidence is going to the jury and
11 that it's ready to go. Obviously, if there's anything for me
12 to resolve, based on any application by the government by
13 6:00 p.m. tomorrow, I'll either resolve it then or before then,
14 and then we'll proceed directly with closings, followed by my
15 instructions, with whatever appropriate breaks in between,
16 depending on how long things take.

17 I usually do break between the principal summations.
18 Whether I break before the rebuttal turns on sort of where we
19 are in the day and whether I think everybody needs a break or
20 not.

21 Any other questions, concerns, issues from the
22 government?

23 MR. ROOS: Just in preparing the evidence, does your
24 Honor send back the entirety of the transcript or just upon
25 being requested by the --

N4SKCHA2

1 THE COURT: I'm glad you asked that. My typical
2 practice is not just upon their request as consistent, I think,
3 with the jury instructions, but, number one, if both sides are
4 in agreement and okay with sending the entirety of the
5 transcript, I'm open to that. I certainly think it would
6 obviate any notes and need to then figure out which portions
7 they want. But if either side has an objection, let's stick to
8 my principal practice.

9 Having said that – and you should confer about this –
10 even if we do it the latter way, that is to say, not send it in
11 the first instance, but only upon request, I think it would
12 make sense, since it's not an especially long transcript, if
13 you guys prepared a redacted version of the transcript, taking
14 out what the jury shouldn't receive if they request any
15 portions, so that if there are any notes, we can promptly have
16 a copy of the relevant pages for them and don't need to bicker
17 about that.

18 All right?

19 MR. ROOS: Yes. I think we'll stick with your Honor's
20 normal practice, but we will clean up the transcript.

21 THE COURT: Great.

22 And, obviously, discussions outside the presence of
23 the jury, sustained objections, that sort of thing.

24 Anything else from the government?

25 From the defense?

N4SKCHA2

1 MR. MILLER: One quick question. Your Honor doesn't
2 send back the indictment, right?

3 THE COURT: It actually varies, but I'm not intending
4 to here, given that it's a speaking indictment, and I think the
5 evidence is the evidence, and the indictment is not evidence.

6 MR. MILLER: Thank you, Judge.

7 THE COURT: All right. Thank you very much. Have a
8 wonderful weekend. Get some rest, and see you Monday.

9 COUNSEL: Thank you, your Honor.

10 (Adjourned to May 1, 2023, at 9:00 a.m.)

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